

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

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|-------------------------------|---|------------------------|
| INGENIO, FILIALE DE LOTO- |) | |
| QUEBEC, INC., |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | C.A. No. 04-1532 (KAJ) |
| |) | |
| GAMELOGIC, INC. and |) | |
| SCIENTIFIC GAMES CORPORATION, |) | |
| |) | |
| Defendants. |) | |

**DEFENDANT GAMELOGIC, INC.'S OPPOSITION TO INGENIO'S MOTION
FOR LEAVE TO FILE FIRST AMENDED COMPLAINT**

GameLogic, Inc. opposes plaintiff Ingenio's Motion for Leave to File First Amended Complaint (D.I. 53) on the ground that the proposed amendment is untimely, and Ingenio has not given - and apparently cannot give - any justification for its belated amendment. Ingenio is not free to ignore this Court's Scheduling Order.

As described at length in GameLogic's October 31, 2005 Motion for Leave to File Amended Answer and Counterclaims (D.I. 49), and in its proposed counterclaims for abuse of process and unfair competition, Ingenio has not brought this suit to vindicate its patent rights. Instead, Ingenio is using the suit as a competitive weapon against GameLogic, a new and much smaller player in the gaming industry. *See* Motion for Leave to File Amended Answer and Counterclaims at 3 (giving one example of Ingenio's use of the mere fact of the litigation to drive away GameLogic's potential customers). Ingenio's failure to actively pursue its claims is evidence of its ulterior motive. *See id.* at 1-2 (describing Ingenio's stalling and total lack of initiative in

discovery). Ingenio's failure to seek timely leave to amend its complaint is of a piece with its more general failure to pursue its case.

Moreover, there appears to be no good reason for Ingenio's failure to comply with the Court's Scheduling Order. GameLogic is informed and believes that Scientific Games demonstrated its ScreenPlay product at a September 2005 trade show (not an October 2005 tradeshow as suggested in Ingenio's motion). *See* Declaration of Steve Saferin (D.I. 64) ¶ 4. Regardless, even Ingenio admits that its counsel investigated ScreenPlay prior to the October 31, 2005 amendment deadline. Although Ingenio contends that its "investigation was not complete" until after the deadline, the evidence is contrary. *See* Declaration of Rodger D. Smith II (D.I. 65) Ex. I (transcription of October 27, 2005 voicemail message from Ingenio's counsel regarding its desire to "amend the current Complaint to include allegations relating to the new [Scientific Games] product").

The substance of Ingenio's proposed amendment—specific allegations about Scientific Games's ScreenPlay product—is admittedly an issue between Ingenio and Scientific Games. But Ingenio's behavior in this case (and particularly its use of the suit for purely competitive purposes) does concern GameLogic. Given Ingenio's conduct in the litigation to date, and its failure to make a factual showing about why it should not be required to comply with the amendment deadline set by the Court, GameLogic must oppose Ingenio's request for leave to file an untimely amendment to the Complaint.

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Dated: November 30, 2005

By: /s/ David E. Moore

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FOR THE DISTRICT OF DELAWARE**

CERTIFICATE OF SERVICE

I, David E. Moore, hereby certify that on November 30, 2005, the attached document was hand delivered to the following persons and was electronically filed with the Clerk of the Court using CM/ECF which will send notification of such filing(s) to the following and the document is available for viewing and downloading from CM/ECF:

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I hereby certify that on November 30, 2005, I have Federal Expressed the documents to the following non-registered participants:

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